

STATE OF INDIANA )  
 )  
COUNTY OF HAMILTON )

SS:

IN THE HAMILTON SUPERIOR COURT

CAUSE NO. 29001-0008 CP485

STATE OF INDIANA, )  
 )  
 )

Plaintiff, )  
 )  
 )

v. )  
 )  
 )

BEVERLY BURCH, )  
CECIL MCCORD, and )  
THE DRAPERY SHOP, INC., )  
a foreign corporation, )  
 )

Defendants. )  
 )  
 )

SHEARER & SHEARER, INC., )  
D/B/A ROYAL AUCTION )  
SERVICES, )  
 )

Garnishee Defendant. )

CLERK, HAMILTON COUNTY COURTS

*Jammy Davis*

2008 AUG 14, AM 9:49

FILED

**COMPLAINT FOR INJUNCTION, RESTITUTION AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Karen M. Freeman-Wilson, and Deputy Attorney General Roy P. Coffey, in accordance with Rule 3 of the Indiana Rules of Trial Procedure, petitions the court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11 *et seq.*, for injunctive relief, consumer restitution, civil penalties, investigative costs and other relief.

## PARTIES

1. The Defendants, Beverly Burch and Cecil McCord, at all times relevant to this complaint were owners of and did business as The Drapery Shop, Inc. at 1730 East 156<sup>th</sup> Street, Westfield, Hamilton County, Indiana and at other locations in Indiana.

2. Shearer and Shearer, Inc., d/b/a Royal Auction Services is named solely as a garnishee, in possession of property of the Defendants.

3. At all times relevant to this complaint, The Drapery Shop, Inc. was a foreign corporation.

4. At all relevant times, The Drapery Shop, Inc. failed to register as a foreign corporation with the Indiana Secretary of State.

5. At all relevant times, Defendants were engaged in or solicited home improvement contracts.

## FACTS

6. At least since December 29, 1995, Defendants have acted as home improvement suppliers by engaging in or soliciting home improvement contracts.

7. On or around June 6, 2000, Defendants entered into a home improvement contract with Melanie Eich (hereinafter referred to as "Eich") for the installation of custom draperies in the Eich home. A true and accurate copy of the contract is attached, incorporated by reference, and marked Exhibit "A".

8. Defendants failed to provide a completed home improvement contract to Eich before she signed the contract.

9. Defendants failed to include the following information in the Eich home improvement contract:

(a) the names of any agent to whom consumer problems and inquiries can be directed;

(b) any time limitations on the consumer's acceptance of the home improvement contract;

(c) a reasonably detailed description of the proposed home improvements;

(d) the approximate starting and completion dates of the home improvements; and

(e) a legible printed or a typed version of that person's name placed directly after or below the signature.

10. On or about June 6, 2000, Eich paid Six Hundred Dollars (\$600.00) to Defendants.

11. At the time the home improvement contract was entered into, Defendants told Eich that her draperies would be made and installed within a reasonable period of time.

12. Defendants did not start, and therefore never completed, any work under Eich's home improvement contract.

13. The Defendants knew or should have known they could not make or install the window treatments as represented to Ms. Eich in paragraph 10.

#### COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

14. The transaction referred to in paragraph 7 above is a home improvement contract as defined by Ind. Code §24-5-11-4.

15. Defendants are home improvement suppliers as defined by Ind. Code §24-5-11-6.

16. By failing to provide completed home improvement contract to Eich, before she signed the contract, Defendants violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-10.

17. By failing to include the information referred to in paragraph 9 above in the home improvement contract entered into with Eich, Defendants violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-10.

COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

18. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 17 above.

19. The transaction referred to in paragraph 7 above is a “consumer transaction” as defined by Ind. Code §24-5-0.5-2(a)(1).

20. Defendants are “suppliers” as defined by Ind. Code §24-5-0.5-2(a)(3).

21. The violations of the Indiana Home Improvement Contracts Act referred to in paragraphs 8 and 9 constitute are deceptive acts.

22. By representing to Eich that the custom draperies would be made and the home improvement work would be completed within a specified or a reasonable period of time as set forth in paragraph 10 above, when Defendants knew or should have known the work would not be completed, Defendants violated Ind. Code § 24-5-0.5-3(a)(10).

23. The misrepresentations and deceptive acts set forth above will continue and will cause irreparable injury unless Defendants are enjoined from engaging in further conduct that violates Ind. Code §24-5-11-1 *et seq.* and Ind. Code §24-5-0.5-1 *et seq.*

COUNT III - KNOWING AND INTENTIONAL VIOLATIONS OF  
THE DECEPTIVE CONSUMER SALES ACT

24. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

25. The misrepresentations and deceptive acts set forth in paragraphs 8, 9, 11, 12,13, 16, 21 and 22 were committed by Defendants with knowledge and intent to deceive.

COUNT IV - VIOLATIONS OF INDIANA BUSINESS CORPORATIONS ACT

26. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 25.

27. The Drapery Shop, Inc., is a foreign corporation and has conducted business within the State of Indiana at least since December 29, 1995.

28. The Drapery Shop, Inc. failed to obtain a certificate of authority to transact business in Ind. as required by Ind. Code §23-1-49-1.

29. The Drapery Shop, Inc. and its owners are liable for a civil penalty for transacting business in Indiana without first obtaining a certificate of authority.

**RELIEF**

**WHEREFORE**, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants for a permanent injunction enjoining Defendants from:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a completed home improvement contract which includes at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

(2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

(4) A reasonably detailed description of the proposed home improvements;

(5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(6) The approximate starting and completion date of the home improvements;

(7) A statement of any contingencies that would materially change the approximate completion date;

(8) The home improvement contract price; and

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

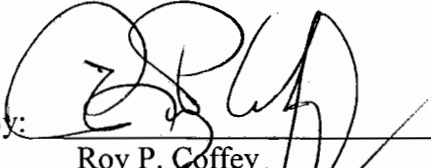
c.. representing, expressly or by implication, that Defendants are able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when Defendant knows or should reasonably know he cannot.

**FURTHERMORE**, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants for the following:

- d. cancellation of contracts pursuant to Ind. Code §24-5-0.5-4(d);
- e. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2) in an amount to be determined at trial;
- f. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- g. a civil penalty pursuant to Ind. Code §23-1-49-2(d), in the amount of ten thousand dollars (\$10,000.00);
- h. on Count IV of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;
- i.. on Count IV of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;
- j. all other just and proper relief.

Respectfully submitted,

Karen M. Freeman-Wilson  
Attorney General of Indiana  
Atty. No. 8603 45-A

By:   
Roy P. Coffey  
Deputy Attorney General  
Atty. No. 3930-29

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Indiana Government Center South  
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16706





# THE DRAPERY SHOP INC.

**DUE TO THE NATURE OF CUSTOM MERCHANDISE, NO CANCELLATIONS, EXCHANGES, OR REFUNDS ARE ALLOWABLE AFTER 3 DAYS FROM DATE OF PURCHASE**

INSTALLATION INFORMATION		NAME OF PURCHASER		HOME PHONE:		NOTE: We will notify you before delivery, which will be in approx. _____ weeks.
INITIALS	DATE	LINES COMPLETE	MR./MRS.	BUSINESS PHONE:		
1			ADDRESS			
2			CITY	STATE	ZIP	
3			JOB LOCATION	LOT #	SUB DIV.	
LINES COMP. 1 2 3 4			DIRECTIONS		STORE	
					DATE	
					PG # 1 of 2	
					INVOICE NUMBER	
					111996	

QTY.	VENDOR	DESCRIPTION	VANE	SIZE	COLOR NO. NAME	ISM OR OSM	WIDTH	LENGTH	TILT	TRAVERSE OR LIFT	HOLD DOWNS	ROOM	DISC	PRICE EACH
1	175	2'			11mm - 180cm		45 3/4"	76"		500		17 1/2		
VERTICALS ONLY														
<input type="checkbox"/> INSERT IN GROOVERS COLOR _____														
<input type="checkbox"/> STACK _____ R _____ SPLIT _____														
<input type="checkbox"/> VALANCE YES _____ NO _____														
2							45 3/4"	54"		500		17 1/2		
VERTICALS ONLY														
<input type="checkbox"/> INSERT IN GROOVERS COLOR _____														
<input type="checkbox"/> STACK _____ R _____ SPLIT _____														
<input type="checkbox"/> VALANCE YES _____ NO _____														
3							46"	34 3/4"		500		17 1/2		
VERTICALS ONLY														
<input type="checkbox"/> INSERT IN GROOVERS COLOR _____														
<input type="checkbox"/> STACK _____ R _____ SPLIT _____														
<input type="checkbox"/> VALANCE YES _____ NO _____														
4							45 3/4"	58 1/2"		500		17 1/2		
VERTICALS ONLY														
<input type="checkbox"/> INSERT IN GROOVERS COLOR _____														
<input type="checkbox"/> STACK _____ R _____ SPLIT _____														
<input type="checkbox"/> VALANCE YES _____ NO _____														
MEASURED BY: _____ CODE: _____														
INITIALS: _____ DATE: _____														
I HEREBY ACKNOWLEDGE THE SATISFACTORY COMPLETION OF THE ABOVE DESCRIBED WORK.														
DATE: _____ SIGNATURE: _____														

THIS ORDER HAS NOT BEEN AUDITED AND IS SUBJECT TO CORRECTION

METHOD OF PAYMENT: ☐ 90 DAYS ☐ CASH ☐ MC / VISA  
 FOR C.O.D.:  
 CHARGE ACCOUNT NO. \_\_\_\_\_ EXP. DATE \_\_\_\_\_

SUB TOTAL	125.00
SALES TAX	16.95
TOTAL	141.95
DEPOSIT	
<input type="checkbox"/> CASH <input type="checkbox"/> CHECK	
<input type="checkbox"/> MC <input type="checkbox"/> VISA	
BALANCE	141.95

Exhibit A Part 3